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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-578

MARTHA ANN LYNCH PORTER, et al.,
Petitioners,

v.

BERT A. LYNCH, JR.,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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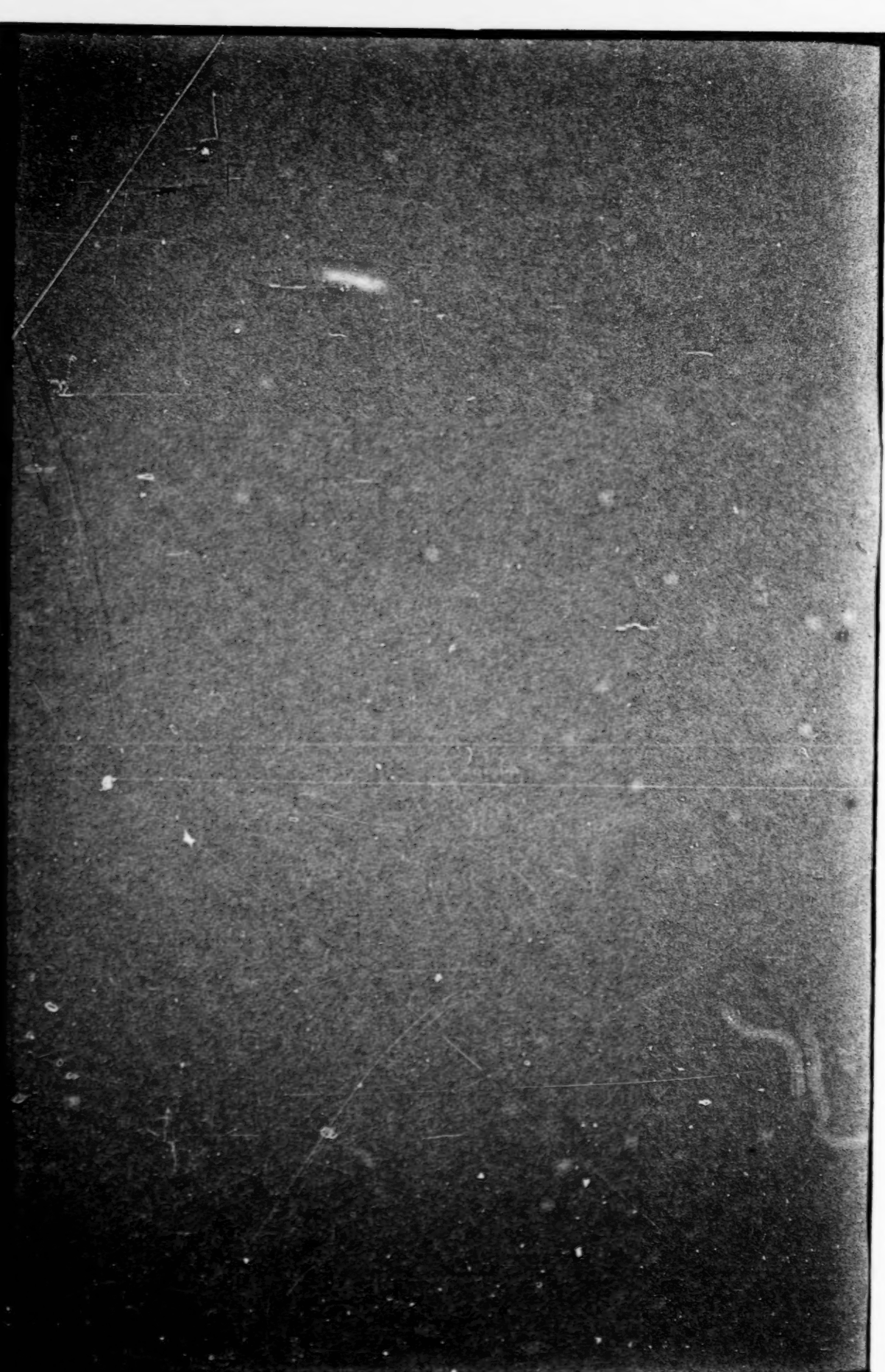

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit filed August 3, 1971, is reported at 446 F. 2d 225.

QUESTIONS PRESENTED

May a federal district court in a diversity case "abstain" from deciding one of the plaintiff's properly joined claims merely because the defendants have attempted to

"moot" the issue of damages by making restitution, where the defendants are vigorously seeking to litigate the very same claim in their subsequently filed state court action?

STATEMENT OF THE CASE

Petitioners' Statement of the Case is inadequate to recite accurately the strange facts which generated the questions presented by this case or to disclose the intensity or ingenuity of petitioners' efforts to evade the processes of the federal courts.

Respondent Bert Lynch, Jr. (hereinafter sometimes referred to as "Lynch") is a resident and citizen of St. Louis, Missouri and a beneficiary of his deceased father's two testamentary trusts. Petitioners are all citizens of states other than Missouri; Martha Porter, Lynch's sister, and Dora Lynch, his mother, are trustees of those two trusts. Martha Porter and her husband, Robert, as well as Dora Lynch, all live in Blytheville, Arkansas.

Lynch, as beneficiary, instituted this action on April 13, 1970, against his sister, Martha Porter, and her husband, Robert Porter, to rectify a wrong perpetrated upon him and the other beneficiaries of the trusts by his sister's clandestine self-dealing with her husband in trust assets. All beneficiaries were joined as necessary parties defendant.

The basic facts which precipitated this action are these: In 1968, while Lynch and his mother were serving as trustees of the trusts, a dispute developed between the Porters and Lynch concerning the proper policies to be followed in the management of the trust assets. Martha Porter then sued her brother in the Arkansas Chancery Court at Blytheville, seeking to break the deadlock and to have Lynch removed as a trustee. In order to buy his peace and to avoid further family acrimony, Lynch re-

signed as a trustee and consented to the appointment of his sister in his stead. As a part of this settlement of that lawsuit, Lynch agreed to sell his stock in the Farmers and Merchants Bank of Blytheville to his sister's husband, Robert Porter, then as now the bank's Board Chairman. The Chancellor at Blytheville approved this settlement, the terms of which were embodied in an order and stipulation dated May 17, 1968, which concluded with a decree reciting that:

> "Nothing further remains to be done in this litigation and it will be for the best interests of all parties if the cause be considered closed and fully terminated after this order is filed. All parties who have signed this stipulation will be bound by this order."

On the *very day* on which Robert Porter acquired the bank stock from Lynch pursuant to the settlement agreement, Porter, unbeknownst to Lynch, immediately turned to his wife Martha, as the newly appointed trustee of the Lynch family trusts, and sold what had formerly been Lynch's stock to the trusts, at a price of $78.00 per share, the same price at which he had just acquired it from Lynch. Some few months later these same shares were resold by the trusts to Mr. Porter; only this time the price was reduced to $60.00 per share, thereby permitting Mr. Porter and his wife to reap an $18.00 profit on each of the 2,200 shares sold, a profit which was in part funded by Lynch as a beneficiary of the trusts.

When Lynch ultimately learned of these machinations, he filed this diversity suit on April 13, 1970, in federal court in Jonesboro, Arkansas. In Count I, Lynch requested, on behalf of the trusts, a judgment against Martha Porter and Robert A. Porter jointly and severally in the amount of $49,199.63, plus interest. and such other and further relief as the court might deem proper. In Count II, he prayed for removal of petitioner Martha Porter as a trustee of the trusts because of her violations of her fiduciary

duties to the trusts. The second count also requested that Lynch be appointed successor trustee and that he recover his costs, an attorneys' fee and such other and further relief as might be appropriate.

As part of their initial effort to defeat federal jurisdiction, petitioners Dora Lynch, Martha Porter and Louis Lynch, the other beneficiaries of the trusts, filed a "disclaimer" of any interest in the lawsuit and a "ratification and confirmation" of the actions of Martha Porter and her husband, Robert A. Porter, which were the subject of the complaint. In their first Motion to Dismiss, petitioners contended that since the pro-rata recovery claimed for that portion of the trusts held for the benefit of respondent was less than $10,000, the district court did not have jurisdiction. No ruling was made at that time on petitioners' motion, but the district court later, in its Memorandum Opinion, properly concluded that the motion was without merit.

On June 24, 1970, *several months after respondent had filed this action in the district court*, petitioners instituted a new suit in the Chancery Court for the Chickasawba District of Mississippi County, Arkansas, at Blytheville, requesting approval of their trust accountings and a declaratory judgment confirming and ratifying all actions of the trustees since 1968, including those transactions which form the subject matter of this case. Pursuant to an order of that court, Lynch has filed exceptions to the accountings.*

On or about September 30, 1970, while the federal court case was still not at issue, Dora A. Lynch, respondent's mother, who was not charged with any wrongdoing

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* There is no requirement under Arkansas law that trustees account to any court for their administration; moreover, the testator specifically exempted his trustees from any duty to account.

and against whom no monetary relief was sought, made a payment of $52,442.92 to the trusts, representing, according to her calculations, the total amount of recompense sought for the trusts by respondent from petitioners Martha and Robert Porter as a result of their self-dealing and breach of fiduciary duties.

Petitioners then filed a "Motion to Dismiss for Want of Jurisdiction of Subject Matter and on Ground of Mootness," contending that since the amount of money alleged to have been wrongfully appropriated by Martha Porter and her husband had been presumably restored to the trusts, there was no longer any subject-matter jurisdiction under Count I, and Count I was therefore moot. Petitioners further asserted that if Count I was moot, Count II, which was denominated a "pendent" claim seeking attorneys' fees and removal of Martha Porter because of her wrongdoing, must also be dismissed.

Over the strenuous objections of respondent, the district court sustained the Motion to Dismiss on the grounds that the case was moot. The court dismissed Count II without prejudice, reasoning that since the jurisdictional predicate for the case—Count I—was removed, it had "no choice" but to dismiss Count II also.

Lynch appealed the district court's dismissal order to the United States Court of Appeals for the Eighth Circuit, which reversed the dismissal of Count II and remanded that portion of the case to the district court for further proceedings. The Court of Appeals held that since the diversity jurisdiction of the federal court had been properly invoked, respondent could properly aggregate all claims which he had, and the dismissal of one claim does not require or permit dismissal of others even though the others would not, if sued on alone, contain all the necessary jurisdictional elements.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

There is no dispute about the fact that the district court's diversity jurisdiction was properly invoked at the outset of the case. Plaintiff Lynch sought recovery in the amount of almost $50,000.00 from the Porters in Count I. Thus, under Rule 18(a), the plaintiff was entitled to aggregate all the claims he had against the defendants and was entitled to a judgment responding to his allegations. The claims of Count II, therefore, were not "pendent," although inaccurately so designated by plaintiff. There was no "federal" claim to which a "state" claim was appended, and petitioners do not now appear to contend that there was any issue of "pendent" jurisdiction in this case.

The issues before the Eighth Circuit were spawned by the petitioners' persistent and resourceful efforts to deprive respondent of his choice of forum. It is unlikely that the decision of the Eighth Circuit in this case will be of general interest because it is confined to its own facts, and it is atypical for a defendant to pay voluntarily the entire amount of plaintiff's prayer on a non-negotiated basis, without obtaining a release or a stipulation for dismissal. Stated otherwise, most cases involving comparable facts would dispose of all issues at once, either by way of settlement or judgment. Here, however, the defendants have sought to settle unilaterally one claim and thereby deprive plaintiff of a right to litigate the other claims in the forum of his preference.

Moreover, any result other than that reached by the Court of Appeals would be an open invitation to federal court defendants to subvert federal jurisdiction by all sorts of devious schemes and would encourage forum

shopping of the type engaged in by petitioners here. Obviously, the sole purpose of the payment made by Mrs. Lynch was to attempt to oust the federal court of jurisdiction, and the later-filed state court action was intended to usurp the adjudicative authority previously conferred on the federal tribunal.

Petitioners cannot and do not contend that the district court could have abstained from the outset and refused to entertain any of respondent's claims. Certainly a federal court is fully competent to redress fiduciary abuses, whether they arise in a corporate or in an express-trust context. But petitioners contend that when Count I was removed from the case, the court then had discretion to dismiss Count II. This is incorrect, for once diversity jurisdiction attaches, it is not lost by subsequent events which reduce or eliminate the amount in controversy, and the plaintiff is entitled to an adjudication of all of his claims. *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283 (1938); *State Farm Mutual Insurance Company v. American Casualty Company*, 433 F. 2d 1007 (8th Cir. 1970); *Stewart v. Shanahan*, 277 F. 2d 233 (8th Cir. 1960).

The present case does not contain any elements of a conflict between federal and state courts or interference by the federal court with the operations, judgments, or powers of the state court. Neither is there any troublesome threshold state law question, the resolution of which might obviate the necessity of confronting constitutional problems. It is true that Martha Porter, the trustee whom plaintiff is seeking to remove, was appointed as a result of a compromise of prior state court litigation, but that litigation had terminated two years before the filing of the instant action.

Most diversity cases will necessarily contain some state law questions which will require adjudication by federal

judges. This is a natural result of the Congressional directive that a non-resident shall have the option to litigate in federal court rather than in the local courts, which may be more subject to parochial prejudices and politics. In *Markham v. Allen*, 326 U.S. 490, 495 (1946) this Court held that:

> "The mere fact that the district court, in the exercise of the jurisdiction which Congress has conferred upon it, is required to interpret state law is not in itself a sufficient reason for withholding relief to petitioner."

The Court in *Markham* acknowledged that although a federal court has no jurisdiction to probate a will or administer an estate, it does have jurisdiction to entertain suits "in favor of creditors, legatees and heirs" so long as the federal court does not interfere with the probate proceedings or disturb or affect the possession of property already in the custody of a state court.

Here, the probate estate had long since been closed, and the Court of Appeals properly observed that:

> "The state court had no custody of the *res* at the time suit was filed. Once the executors closed the testator's estate and delivered the *res* to the trustees, the probate court's jurisdiction terminated."

The questions remaining for resolution by the district court are rather simple ones—whether the trustee should be removed and whether plaintiff is entitled to attorneys' fees from the trust for his role in recovering trust assets. These are neither difficult nor unresolved legal issues and are not dependent upon the interpretation or construction of any Arkansas statute. They are, rather, addressed to the court's inherent equity jurisdiction. Thus it is manifest that the court has the duty to adjudicate

these claims, particularly where, as here, the failure to do so would unconscionably sanction and reward petitioners' forum-shopping scheme.

The requirement that a federal court must decide a case properly presented to it is subject to very few exceptions, none of which are present in the instant case. In *Allegheny County v. Mashuda Co.*, 360 U.S. 185, 188-89 (1959), this Court said:

> "The doctrine of abstention, under which a district court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a district court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest. Since no exceptional circumstances justifying abstention appear in this case we think that the Court of Appeals was correct in holding that the district court should have adjudicated the respondent's claim."

Even where the state law questions are difficult, this Court has refused to permit abstention. In *Meredith v. Winter Haven*, 320 U.S. 228, 234 (1943) the Court stated as follows:

> "But we are of the opinion that the difficulties of ascertaining what the state courts may hereafter determine the state law to be do not in themselves afford a sufficient ground for a federal court to decline to exercise its jurisdiction to decide a case which is properly brought to it for decision.
>
> "The diversity jurisdiction was not conferred for the benefit of the federal courts or to serve their con-

venience. Its purpose was generally to afford to suitors an opportunity in such cases, at their option, to assert their rights in the federal rather than in the state courts. In the absence of some recognized public policy or defined principle guiding the exercise of the jurisdiction conferred, which would in exceptional cases warrant its non-exercise, it has from the first been deemed to be the duty of the federal courts, if their jurisdiction is properly invoked, to decide questions of state law whenever necessary to the rendition of a judgment . . ."

The principal case relied upon by petitioners, *United States v. Bank of New York Co.*, 296 U.S. 463 (1936) is inapposite to the instant situation since (a) it was not a diversity case and (b) the property to which the United States was making claim was already under the possession and control of the state court. As a matter of fact, the Court there set forth the rule which was correctly applied by the Eighth Circuit here, *i.e.*, that in a *qu si-in-rem* case, including one to "administer trusts," the court first acquiring jurisdiction—whether state or federal—exercises it to the exclusion of all others. See also *Princess Lida v. Thompson*, 305 U.S. 456 (1939).

The decision of the Eighth Circuit below, in addition to being circumscribed by its own facts, is completely in harmony with the teachings of this Court. There is no actual or threatened disruption of state-federal relations, and review of this family dispute by this Court would serve no generally useful purpose.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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